UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,231	11/12/2003	Seeta Hariharan	RPS920030097US1/2936P	6404

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EXAMINER
SHIN, KYUNG H

ART UNIT	PAPER NUMBER
2143	

NOTIFICATION DATE	DELIVERY MODE
06/18/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/706,231	HARIHARAN ET AL.
	Examiner	**Art Unit**	
	KYUNG H. SHIN	2143	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>09 June 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b) ☐ They raise the issue of new matter (see NOTE below);

  (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: *Claim 35 is currently amended*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: <u>28-39</u>.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Nathan J. Flynn/
  Supervisory Patent Examiner, Art Unit 2154

Continuation of 11. does NOT place the application in condition for allowance because:

Response to Remarks

The 112 rejection has been withdrawn based on amendments to claim limitations.

The scope of the claimed invention as a whole has been changed.   The amendments will not be entered.

It is not a requirement that the prior art solve the same problem as the application is trying to solve. The requirement is that the prior art discloses the claimed invention's limitations.   Hebert, Yao and Jarvis disclose controlling communications (signaling protocol; XON/XOFF flow control for congestion; congestion control algorithms) within a programmable (API) environment.   The method to control congestion is by controlling network communications.   Hebert discloses the network processor, host processor and an API interface.   In addition, Yao discloses the congestion control application utilizing XON/XOFF commands for congestion control.   The Office Action states that Yao is used in the rejection of the congestion control application limitation.   And, Jarvis discloses the selection of a congestion control algorithm.

Hebert discloses the claimed network processor.   The specification discloses: "In order to couple portions of a network together or to couple networks together, network processors residing in switches, routers, and/or other components are typically used."   Based on this disclosure, the specification discloses that a network processor can be in a switch.   Hebert discloses a communications switch or a "network processor" (within the communications switch).   Since Hebert discloses the network processor, the generic API interface is for a network processor as per claimed invention. This API interface is used to control switches vial signaling protocols.   The controlling of network congestion can be accomplished by controlling the amount of communications traffic generated by a communications switch. Yao discloses XON/XOFF commands to control communications traffic and thereby control network congestion in the process.

Obviousness:
The rejection to each independent and dependent claim includes a citation from the referenced prior art that discloses the basis for the rejection. Each obviousness combination clearly indicates the claim limitation the combined reference prior art teaches.   In addition, a cited passage from the referenced prior art clearly indicates the motivation for the obviousness combination. Each obviousness combination's disclosure is equivalent to the Applicant's claimed limitation(s) for the claimed invention.
Achieved advantage is a valid motivation for the combination of referenced prior art.   The combination of each referenced prior art combination states a motivation for the combination, which translates to an achieved advantage for the combination.
All of the referenced prior art is in the same field of endeavor and a search by one skilled in the art would have returned the referenced prior art within the set of returned prior art.

It is not a requirement that the referenced prior art solve the same problem as the claimed invention in order to be combinable.   There are three criteria for combination: (1) same file of endeavor; (2) motivation for the combination; and (3) successful disclosure of claim limitation due to prior art combination.
A search of applicant's invention field of endeavor would have revealed a set of prior art including the referenced prior art. Motivation is provided within the Office Action for each combination.   The combination of the indicated referenced prior art successfully discloses the indicated claim limitations and the claimed invention.

In conclusion, Hebert discloses the network processor, host processor and API interface.   In addition, Yao discloses the congestion control application utilizing XON/XOFF commands to control congestion.   And, Jarvis discloses the selection of a congestion control algorithm. .

10/706,231   KHS 6/11/2008